



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan BCS 2103 v. Zeng*, 2022 BCCRT 832

B E T W E E N :

The Owners, Strata Plan BCS 2103

APPLICANT

A N D :

FANHAN ZENG and SIMON CHOY

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about bylaw violation fines. The respondent Fanhan Zeng owns strata lot 445 (SL445) in the applicant airspace parcel strata corporation, The Owners, Strata Plan BCS 2103 (strata). The respondent Simon Choy rented the strata lot from 2016 to 2019.

2. The strata says the respondents or another SL445 tenant breached the strata's short-term accommodation (STA) bylaw 19 different times in 2019 and 2020, and breached a smoking bylaw 5 times in 2020. The strata requests an order that the respondents pay the \$200 fine imposed for each alleged infraction, which totals \$4,800. The strata also requests an order that the respondents stop using the strata lot as a "short term rental" and obey the smoking bylaw.
3. The respondents say they did not provide STA at SL445, did not breach any strata bylaws, and the claims should be dismissed.
4. In this dispute, the strata is represented by a strata council member. The respondents are each self-represented.
5. For the following reasons, I find that Mr. Zeng's tenants breached the strata's STA bylaw 3 times, and breached its smoking bylaw once. I find Mr. Zeng must pay the strata \$800 for bylaw fines.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* (CRTA). CRTA section 2 says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
7. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice and fairness.

8. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Although the parties' submissions question other parties' credibility in some respects, the credibility of interested witnesses cannot be determined solely by whose personal demeanour in a proceeding appears to be the most truthful. The most likely account depends on its harmony with the rest of the evidence. Further, in the decision *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always needed where credibility is in issue. Keeping in mind that the CRT's mandate includes proportional and speedy dispute resolution, I find I can fairly hear this dispute through written submissions.
9. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, even where the information would not be admissible in court. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
10. Under CRTA section 123, in resolving this dispute the CRT may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

Witness Evidence

11. Mr. Choy submitted several witness statements from his visitors, who said they did not use SL445 as STA. In its final reply, the strata says that these statements are "forged." Specifically, the strata says the statements allegedly resembled affidavits submitted in other proceedings, and that some witness addresses were incorrect, although it does not explain how it determined that. The strata also says that dates were altered, including the date of the affidavits' commissioning stamps. The strata says the commissioning lawyer confirmed that they did not commission those affidavits. The strata did not directly ask to submit new supporting evidence.

12. I note that the CRT does not require witness statements to be in affidavit form, or to contain accurate witness addresses. Even if the statements were written using affidavit templates with altered content and dates, I find the evidence does not show that the witnesses did not make the submitted statements or, as the strata seems to suggest, that the witnesses do not exist. Further, even if I were to reject the witness statements as forgeries, and I do not, I find this would not have changed the outcome of this dispute. As explained below, the strata bears the burden of proving that guests purchased STA from the respondents in violation of the strata's bylaws, and that the strata properly imposed the claimed fines. Even without the witness statements, as explained below, I find the strata has not met this burden for all but 1 of the alleged bylaw violations that the witness statements relate to.

Surveillance Evidence

13. The strata submitted surveillance system photos in support of its arguments. Mr. Zeng says that under the *Personal Information Protection Act* (PIPA), using video surveillance to enforce strata bylaws was not reasonable. However, on May 9, 2018, the strata registered bylaws 47 and 48 with the Land Title Office (LTO), about security measures and personal information collection. Bylaw 47(3)(c) allows the strata to use video surveillance to enforce strata bylaws.

14. In Order P09-02, [2009] B.C.I.P.C.D.no. 34, the Office of the Information and Privacy Commissioner for British Columbia (OIPC) found that a strata corporation was not permitted to use video surveillance for bylaw enforcement. However, that decision is not binding on the CRT. Further, that decision turned on its particular facts, including whether the strata corporation had given adequate notice of how it would use video surveillance.

15. Here, I find the respondents had notice, through bylaw 47(3)(c), that the strata would use video surveillance to enforce bylaws. In addition, any decision about the strata's use of video surveillance is governed by PIPA, which is outside of the CRT's jurisdiction. As there is no evidence that the OIPC has found that bylaw 47(3)(c) contravenes PIPA, I find the strata's security system photos are admissible.

ISSUES

16. The issues in this dispute are:
 - a. Did Mr. Zeng or his tenants breach the strata's STA bylaw?
 - b. Did Mr. Zeng or his tenants breach the strata's smoking bylaw?
 - c. What amount of bylaw fines, if any, must the respondents pay to the strata?
 - d. Should I order the respondents to stop using the strata lot as STA and to obey the smoking bylaw?

EVIDENCE AND ANALYSIS

17. In a civil proceeding like this one, the strata, as the applicant, must prove its claims on a balance of probabilities (meaning "more likely than not"). I have read and weighed the parties' evidence and submissions, but I refer only to that which I find necessary to explain my decision.
18. The strata was formed in 2006, and has several hundred strata lots in 2 high-rise towers. Mr. Zeng purchased SL445 in 2013, as shown on the title document in evidence. Mr. Zeng says he and his family live outside of Canada, and that he rents SL445 to longer-term tenants.
19. Mr. Choy undisputedly rented SL445 from Mr. Zeng beginning in 2016, and Mr. Choy says he moved out on December 29, 2019. A Notice of Tenant's Responsibilities (Form K) in evidence shows that a new tenant, TR, rented SL445 beginning on January 5, 2020. An April 1, 2020 electric utility bill in evidence is addressed to TR at SL445's address, and covers the period from January 30, 2020 to March 30, 2020.
20. The strata suggests that TR might not be a real person, and the respondents might have fabricated TR's tenancy to avoid responsibility for alleged bylaw violations. Given the utility bill addressed to TR, the Form K signed by TR, and the lack of evidence that TR was not a tenant, I find the strata has not proven that TR was not a real person or a real SL445 tenant. On the evidence before me, I find that Mr. Choy

rented SL445 until December 29, 2019, and TR rented it from January 5, 2020 and throughout 2020. It is undisputed that TR no longer rents SL445. Further, I find that Mr. Zeng did not reside at SL445 on any of the alleged bylaw violation dates, and that he did not personally violate the strata's STA or smoking bylaws.

21. The strata requests that the CRT consider the "history" of SL445. In a previous CRT decision, *The Owners, Strata Plan BCS 2103 v. Zeng*, 2019 BCCRT 1236 (2019 CRT decision), a CRT Vice Chair found that Mr. Choy breached the strata's STA bylaw several times on or before May 2019, and ordered Mr. Zeng to pay Mr. Choy's bylaw fines. However, I find that liability to pay previous bylaw fines does not determine whether the respondents must pay bylaw fines for the newer infractions alleged in this dispute.
22. Under *Strata Property Act* (SPA) section 130, the strata must fine an owner for bylaw violations committed by the owner or their guests, and must fine a tenant for bylaw violations committed by the tenant or their guests. However, section 131 says that the strata may collect fines imposed against a tenant from the owner. Given my above finding that Mr. Zeng did not reside at SL445, I find the strata essentially argues that the SL445 tenants violated the strata's STA and smoking bylaws. However, the strata seeks to collect fines for those alleged violations from Mr. Zeng and Mr. Choy.

Did Mr. Zeng's tenants breach the strata's STA bylaw?

23. Bylaw 36A was registered at the LTO on May 9, 2018. It says that a strata lot must not be used for STA purposes, including as a hotel or vacation rental, and including through websites such as Airbnb or similar companies or services. The bylaw also says that a resident must not enter into a license for the use of all or part of a strata lot. It is undisputed that a tenant would breach bylaw 36A by selling accommodations in SL445 for a period of 1 week or less, for STA purposes.

24. The strata says that Mr. Zeng's tenants breached bylaw 36A 19 times between June 2019 and September 2020. The strata says the tenants provided Airbnb-style STA in SL445, as alleged in submitted correspondence.
25. For each alleged bylaw 36A violation, the strata sent nearly-identical bylaw violation letters to both Mr. Zeng and either Mr. Choy or "Current Resident" at the SL445 address. Under SPA section 61(2), a strata notice may be addressed to a person by name, or to a person as owner or tenant. I find that the letters addressed to "Current Resident" were properly addressed to the tenant at that time, which was either Mr. Choy or TR.
26. The bylaw violation letters each said that the strata had received a complaint of STA in SL445 contrary to bylaw 36A. The letters requested a response or a strata council hearing request, which the strata said it must receive within 14 days of the letter's date, after which it might impose a fine. The strata sent follow-up letters, each more than 14 days later, saying that because no response had been received it was imposing a \$200 fine "against your account." However, the follow-up letters also requested that payment be forwarded to the strata's property management company.
27. The respondents say they never received any of the strata's bylaw violation notices or fine notices. They do not describe any problems with their other mail. I note that according to the 2019 CRT decision, Mr. Zeng claimed to have issues receiving strata correspondence, but here the respondents do not say whether they have since taken any steps to ensure they receive strata notices. On the evidence before me, and as further explained below, I find that Mr. Zeng and his tenants Mr. Choy and TR likely received all of the strata correspondence that was addressed to them, and chose not to respond.
28. Under SPA section 135(1)(e), a bylaw fine must not be imposed unless the strata first gives the owner or tenant the particulars of the complaint and a reasonable opportunity to answer it, including a hearing if requested. SPA 61(1) describes how notice must be provided to a person under the SPA and strata bylaws, which I find includes notices of bylaw violations and fines. There is no evidence that Mr. Zeng or

his tenants provided a mailing address outside the strata. I note that the “Owner’s Address” section in each of the Forms K in evidence was left blank. So, under section 61(1)(b) I find the strata properly mailed its correspondence to the owner and tenants at SL445’s address.

29. According to *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449, the strata must strictly comply with SPA section 135 in order to collect fines, including as noted the notice requirements and an opportunity to respond and request a hearing. I find that the strata did not meet those requirements in several instances, which I will now address. This lack of proper notice renders several bylaw fines invalid.
30. For alleged bylaw 36A violations on February 12, 2020, March 4 and 9, 2020, June 27, 2020, and July 9, 13, 16, and 22, 2020, the strata issued bylaw violation notices addressed to the “Current Resident”, whom I find was TR. However, follow-up letters imposing \$200 fines for each of those alleged violations were addressed to Mr. Choy, and not TR. Similarly, for alleged bylaw 36A violations on August 8 and 11, 2020, and September 28, 2020, the strata issued bylaw violation notices and fine notices to Mr. Choy, and not TR. I find those bylaw fine notices imposed \$200 fines on Mr. Choy.
31. However, I find Mr. Choy was not SL445’s tenant on any of those dates. It was open to the strata, under its bylaws and the SPA, to require Mr. Zeng to provide a current Form K to establish the identity of his tenant, if any (as previously noted in paragraph 22 of the 2019 CRT decision). However, the strata chose not to do so, and fined Mr. Choy instead of TR or “Current Resident”. I find Mr. Choy was not responsible for any of those alleged violations. So, I find those bylaw fines are invalid, and I dismiss the strata’s claims for them.
32. The strata sent bylaw 36A violation letters dated October 4, 2019 to Mr. Zeng and “Current Resident”, whom I find was Mr. Choy. The letters alleged an STA violation on October 3, 2019 at 10:15 a.m. However, both Mr. Choy and the strata’s own concierge records in evidence say that the alleged visit took place on October 2, 2019, not October 3, 2019. I find this alone is sufficient evidence that the bylaw 36A violation did not occur as alleged, and that the corresponding bylaw fine is invalid.

Further, Mr. Choy says his friends AR and FR visited him on October 2, 2019, and did not use SL445 as STA. This is confirmed by AR's written statement, which is not contradicted by other evidence. I find the evidence does not show that SL445 was used for STA on October 3, 2019. So, I find the \$200 bylaw fine imposed for that alleged bylaw infraction is invalid, and I dismiss the strata's claims for it.

33. The strata issued bylaw 36A violation letters to Mr. Zeng and "Current Resident" on November 4, 2019, alleging a violation from September 15 to 23, 2019. The strata followed up with letters imposing a \$200 fine on November 22, 2019. Although the strata says another resident complained of an STA violation, I find there are no records of that resident's complaint before me, and no other evidence showing an STA violation spanning September 15 to 23, 2019. I find the strata has not met its burden of proving that Mr. Choy violated bylaw 36A as alleged. So, I find that the \$200 fine is invalid, and I dismiss the strata's claim for it.
34. The strata also sent letters to Mr. Zeng and "Current Resident" alleging bylaw 36A violations on June 11, September 23, November 19, and November 28, 2019. The strata followed up with letters imposing \$200 fines for each alleged violation. Mr. Choy says these were all social visits, not STA: July 11, 2019 was his aunt, ES, September 23, 2019 was his uncle, DJ, November 19, 2019 was his mother, BC, and November 28, 2019 was his cousin, DB, and her spouse.
35. I find written statements from ES, BC, and DB all support that those visits were not for STA. I find the strata has not met its burden of showing that those visits were for STA. So, I find the July 11, November 19, and November 23, 2019 bylaw fines are invalid, and I dismiss the strata's claim for them.
36. However, DJ's statement says that he visited SL445 on September 11, 2019, and does not mention September 23, 2019. The strata's violation letters said that the concierge confirmed with the "tenant" that a couple had stayed at SL445 on a short-term basis on September 23, 2019. Mr. Choy does not comment on this alleged confirmation, other than saying DJ visited. On balance, I find the strata had a sufficient basis to determine that Mr. Choy violated bylaw 36A on September 23, 2019. I find

the strata satisfied the section 135 notice requirements for that violation, and that it validly issued the \$200 fine against Mr. Choy.

37. Mr. Zeng says that under bylaw 28, the strata cannot impose a fine for a continuing contravention more often than once every 7 days. He says the September 23, 2019 violation is within 7 days of the alleged September 15 to 23, 2019 violation noted above. However, I find the evidence does not show that the September 23, 2019 violation was a continuing contravention. The SPA and bylaws do not limit how often fines may be imposed for new violations. I find none of the alleged bylaw fines are for continuing contraventions.
38. The strata also issued \$200 fines against the “Current Resident” for bylaw 36A violations on June 1 and June 16, 2020. As noted, TR was the SL445 tenant on those dates. I find the strata’s evidence, including concierge correspondence, shows the strata had sufficient reason to believe guests were using SL445 for STA on those dates. In particular, concierge records show that guests confirmed on June 1, 2020 that they had used Airbnb to stay at SL445. Further, I find none of the evidence before me explains that any of the guests were present for other reasons. I find the strata satisfied the section 135 notice requirements for these \$200 fines, and that both of them were validly imposed against TR.

Did Mr. Zeng’s tenants breach the strata’s smoking bylaw?

39. Bylaw 9 was registered at the LTO on May 9, 2018. It says that a resident or visitor must not smoke or vape anywhere on or within “Strata Plan BCS 2103”, including in a strata lot. I find bylaw 9 prohibits smoking anywhere on the strata’s premises, including on balconies.
40. The strata issued similar bylaw 9 violation letters and follow-up fine letters to those it issued for the bylaw 36A violations discussed above. I find some of these bylaw 9 fines were not validly imposed, as I will now explain.

41. The strata sent letters to “Current Resident” and Mr. Zeng alleging May 15 and 27, 2020 bylaw 9 violations, and follow-up letters imposing a \$200 fine. I find the strata imposed the bylaw fine on TR, who was the tenant at that time. A written and signed complaint from a neighbour in evidence alleged that SL445 occupants were smoking on the balcony at specific times on those dates. Mr. Zeng says the SL445 balcony is not visible from that neighbour’s strata lot. However, I find the submitted evidence does not confirm that the neighbour was unable to observe whether people were smoking on the SL445 balcony. I find there is no witness or other evidence before me that contradicts the neighbour’s written statement. On balance, I find that SL445 occupants smoked on the balcony on May 15 and 27, 2020, which was a violation of bylaw 9 by TR. I find that the \$200 fine was validly issued against TR.
42. The strata sent letters to “Current Resident” and Mr. Zeng alleging a June 1, 2020 bylaw 9 violation, and followed up with letters imposing a \$200 fine. I find the strata imposed the fine based on an alleged June 1, 2020 verbal complaint by another strata resident, as mentioned in concierge correspondence in evidence. However, I find the evidence before me does not sufficiently support that the neighbour, or anyone else, saw someone smoking on the SL445 balcony on that date. I find the strata has not met its burden of proving that SL445 occupants were smoking on June 1, 2020. So, I find the June 1, 2020 bylaw 9 fine is invalid, and I dismiss the strata’s claim for it.
43. The strata issued Mr. Zeng a letter alleging that a “resident” of SL445 was smoking on the balcony on June 16, 2020, in violation of bylaw 9. The strata followed up with letters addressed to Mr. Zeng and to “Current Resident” imposing a \$200 fine. I find the strata imposed the bylaw fine on TR. However, I find there is no evidence showing that the strata issued a violation letter to “Current Resident” or TR, or gave him an opportunity to respond or to request a hearing, before imposing the fine. I find this means the strata did not satisfy the SPA section 135 notice requirements before imposing the fine on TR. So, I find this fine is invalid, and I dismiss the strata’s claim for it.

44. The strata also issued letters to Mr. Zeng and “Current Resident” alleging a June 17, 2020 violation of bylaw 9. However, there are no letters or other evidence before me showing that the strata actually imposed any fine for this alleged violation. I find no valid fine was imposed for the alleged June 17, 2020 violation, and I dismiss the strata’s claim for it.
45. Finally, I find correspondence also shows the strata imposed a \$200 fine on Mr. Choy for an alleged August 8, 2020 bylaw 9 violation. As Mr. Choy was no longer a tenant on that date, I find that fine is not valid, and I dismiss the strata’s claim for it.

What amount of bylaw fines must the respondents pay to the strata?

46. As noted, the strata validly issued 1 fine of \$200 against Mr. Choy, and 3 fines of \$200 each against TR.
47. The strata does not directly say whether it seeks payment from Mr. Choy for his bylaw fine, or whether it wishes to collect it from Mr. Zeng under SPA section 131. However, it is undisputed that the strata charged all of the claimed fines to Mr. Zeng’s strata lot account, as set out in the bylaw fine letters. So, I find that the strata likely seeks to collect Mr. Choy’s fine payment from Mr. Zeng under SPA section 131. Further, TR was not named as a party to this dispute, so I find the strata also seeks to collect the fines imposed against TR from Mr. Zeng under SPA section 131. I order Mr. Zeng to pay the strata \$800 for the 4 bylaw fines.

Should I order the respondents to obey the strata bylaws?

48. As noted, the strata requests that I order the respondents to stop using SL445 for STA, and to obey the smoking bylaw. I find that although Mr. Zeng, as the SL445 owner, must pay the strata for his tenants’ bylaw fines, he did not personally break bylaw 36A or bylaw 9. So, I decline to order Mr. Zeng to stop using his strata lot for STA or to obey bylaw 9. Further, it is undisputed that Mr. Choy no longer resides at the strata, so ordering him to obey the strata’s bylaws would serve no useful purpose. I dismiss the strata’s request for orders to stop using SL445 as STA and to obey the smoking bylaw.

CRT Fees, Expenses, and Interest

49. The SPA does not permit interest to be charged on fines, although interest under the *Court Order Interest Act* applies. I find interest is reasonably calculated on Mr. Choy's \$200 bylaw fine from the date of the October 25, 2019 letters imposing the fine until the date of this decision. I find interest on TR's 3 fines is reasonably calculated from July 15, 2020, which is the date each of those \$200 fines was imposed, until the date of this decision. The total interest is \$10.55.
50. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. The strata was partly successful in its claims against Mr. Zeng, so I find Mr. Zeng must reimburse the strata \$112.50 for half of the CRT fees it paid. The respondents paid no CRT fees, and no party claimed CRT dispute-related expenses, so I order no further reimbursements.
51. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses against Mr. Zeng.

ORDERS

52. I order Mr. Zeng to, within 30 days of the date of this decision, pay the strata a total of \$923.05, broken down as follows:
- a. \$800 in debt for bylaw fines,
 - b. \$10.55 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$112.50 in CRT fees.
53. The strata is also entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
54. I dismiss the strata's remaining claims.

55. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under section 58 of the CRTA, the order can be enforced through the British Columbia Provincial Court if it is an order for financial compensation or return of personal property under \$35,000. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

Chad McCarthy, Tribunal Member